

Department of Planning and Zoning

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TO: Development Review Board
FROM: Scott Gustin
DATE: April 7, 2015
RE: 15-0865VR; 2-4 North Winooski Avenue

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Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

Zone: DT Ward: 2C

Owner/Representative: Miller North Properties, LLC / Tom & Deb Miller

Request: Variance to change use from café to bar/tavern

Applicable Regulations:
Article 12 (Appeals and Variances)

Background Information:

The applicant is seeking a variance to allow expansion of a bar/tavern into an adjacent (vacant) deli space. The subject property is located in the Downtown Transitional (DT) zone. Bar/tavern is a prohibited use in this zone. The existing bar/tavern is a pre-existing nonconforming use. No site or exterior building alterations are included in this proposal.

The requested variance is predicated on a potential change in zoning that might allow a bar/tavern use on this property in the future. The city's form based zoning code that is presently under development might allow bar/tavern use in what is now the DT zone, but it might not. The form base code remains under development and is far from final. To allow the expansion of a nonconforming use under the existing zoning code because it might change in the future is not sound land use planning policy. It also runs contrary to the existing zoning regulations.

Previous zoning actions for this property are as follows:

- 9/23/13, Approval for new signage
- 5/28/12, Approval for replacement awning
- 1/31/07, Approval for awning
- 1/11/07, Approval for sign
- 4/26/99, Approval to establish deli/grocery store (VT Sandwich Company)
- 12/9/94, Approval for installation of 7 gas meters
- 5/12/76, Approval for 4 signs
- 6/26/74, Approval for renovations to front facade

Recommendation: Variance denial as per the following findings:

I. Findings

Article 12: Variances and Appeals

Sec. 12.1.1 Variances

(a) That there are unique physical circumstances or conditions, including irregularity, narrowness, or shallowness of lot size or shape, or exceptional topographical or other physical conditions peculiar to the particular property, and that unnecessary hardship is due to such conditions, and not the circumstances or conditions generally created by the provisions of the zoning regulation in the neighborhood or district in which the property is located.

The subject property is very small at just over 1,700 sf; however, its small size has nothing to do with the requested variance. The requested use variance does not pertain to any physical circumstances or conditions peculiar to the property. The hardship prohibiting the establishment of new or expanded bars/taverns within this property is entirely created by the provisions of the zoning regulation. **(Adverse finding)**

(b) That because of such physical circumstances or conditions, there is no possibility that the property can be developed in strict conformity with the provisions of the zoning regulation and that the authorization of a variance is, therefore, necessary to enable the reasonable use of property.

The requested use variance does not pertain to any physical circumstances or conditions. No variance is necessary to enable the reasonable use of the property. **(Adverse finding)**

(c) The unnecessary hardship has not been created by the applicant.

There is no unnecessary hardship. The DT zone allows for a wide variety of uses. Bar/tavern, however, is not one of them. **(Adverse finding)**

(d) That the variance, if authorized, will not alter the essential character of the neighborhood or district in which the property is located, substantially or permanently impair the appropriate use or development of adjacent property, reduce access to renewable energy resources, nor be detrimental to the public welfare.

The variance, if authorized, would not alter the essential character of the neighborhood primarily because the bar/tavern exists already. The proposed variance, however, would enable that prohibited bar/tavern to expand on a property that is immediately bordered by a residential zoning district. Enabling the expansion of a nonconforming bar next to a residential zone is contrary to the city's intended land use patterns. A larger bar/tavern next to residential properties may well adversely impact the appropriate use or development of those properties. Access to renewable energy resources would be unaffected. Whether the expanded bar/tavern would be detrimental to the public welfare cannot be determined based on the application materials submitted. **(Adverse finding)**

(e) That the variance, if authorized, will represent the minimum variance that will afford relief and will represent the least deviation possible from the zoning regulation and from the plan.

The requested variance is not a matter of degrees. It is a requested change in use from a permitted deli to a prohibited bar/tavern. As noted previously, there are a number of potential uses that may be allowed on the subject property. A bar/tavern is not one of them. **(Adverse finding)**

(f) The variance, if granted, will not result in the extension of a non-complying situation or allow the initiation of a nonconforming use of land.

The variance, if granted, would indeed result in the extension of a nonconforming use. The presently existing nonconforming bar/tavern next door would expand into the now vacant deli space.

Sec. 5.3.4, *Nonconforming Uses*, (a) *Changes and Modifications*, 1, *Nonconforming Non-Residential Use*, states that a nonconforming non-residential use shall not be expanded or altered in any way, other than to full conformity under this Ordinance except for conversion to residential use or changes involving neighborhood commercial uses. The proposed bar/tavern expansion does not qualify under either exception. **(Adverse finding)**

II. Reasons for denial

Per the adverse findings above.